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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,529	06/26/2003	Su Il Choi	5895P038	5763
8791	7590	08/09/2007	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040			LEUNG, CHRISTINA Y	
ART UNIT		PAPER NUMBER		
		2613		
MAIL DATE		DELIVERY MODE		
08/09/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/606,529	CHOI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Christina Y. Leung	2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 April 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4-7 is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Declarations***

1. The declarations filed on 26 April 2007 under 37 CFR 1.131 have been considered but are ineffective to overcome the Haran et al. (US 2005/0249497 A1) reference.
2. Examiner acknowledges that the evidence submitted is sufficient to establish conception of subject matter of claims 1-3 prior to the reference date of Haran et al. However, Examiner respectfully notes that the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Haran et al. reference to either a constructive reduction to practice or an actual reduction to practice.

MPEP 715.07 states that:

“...37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

“(A) > (actual)< reduction to practice of the invention prior to the effective date of the reference; or

“(B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

“(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice).

“A conception of an invention, though evidenced by disclosure, drawings, and even a model, is not a complete invention under the patent laws, and confers no rights on an inventor,

and has no effect on a subsequently granted patent to another, UNLESS THE INVENTOR FOLLOWS IT WITH REASONABLE DILIGENCE BY SOME OTHER ACT, such as an actual reduction to practice or filing an application for a patent. Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., 166 F.2d 288, 1909 C.D. 498, 139 O.G. 991 (1st Cir. 1909).”

In this case, Applicant has not presented any evidence establishing diligence between the time prior to the reference date of Haran et al. to the date of the constructive reduction to practice (i.e., Applicant’s filing of an application for a patent in Korea).

Note that MPEP 715.07(a) states that “where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. Ex parte Hunter, 1889 C.D. 218, 49 O.G. 733 (Comm’r Pat. 1889). Rather, applicant must show evidence of facts establishing diligence....What is meant by diligence is brought out in Christie v. Seybold, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See In re Nelson, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case.” Furthermore, MPEP 2138.06 states that “the entire period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses.” See MPEP 715.07 and 2138.06 for further details.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Haran et al. (US 2005/0249497 A1).

Regarding claim 1, Haran et al. disclose a bandwidth allocation device for an Ethernet Passive Optical Network (EPON) including an optical line termination (OLT), an optical distribution network (ODN), and a plurality of optical network units (ONU) (Figure 2; page 1, paragraph [0004]),

wherein the optical line termination includes a Multi-Point Control Protocol (MPCP) allocator, and each optical network unit includes an MPCP requester (page 1, paragraph [0004]), the MPCP allocator including:

a class-based queue state counter which differentiates the optical network units upon receipt of a control message for upstream report from a Medium Access Control (MAC) control layer and obtains class-based queue length information of the optical network units (Haran et al. disclose different packet priorities, i.e., classes; page 1, paragraph [0006]); and

a grant generator which, when queue state information of all the optical network units is obtained through the class-based queue state counter, generates a service-based bandwidth for

each of the optical network units, and transmits a downstream control message (i.e., a grant) for upstream bandwidth allocation (page 1, paragraphs [0004]-[0007]);  
the MPCP requester including:

a class-based buffer counter which counts a class-based buffer length upon receipt of the downstream control message for upstream bandwidth allocation from the grant generator (page 1, paragraph [0007]); and

a request generator which generates class-based buffer length information, and transmits an upstream control message for upstream report (i.e., report message “REP”) containing the generated buffer length information (page 1, paragraphs [0006]-[0007]).

Regarding claim 2, Haran et al. disclose that the downstream control message (i.e., a grant) as a grant of an upstream bandwidth request includes a grant level (i.e., a level pertaining to the priority of the data), a grant length (Figure 1 shows “grant length” 102), and a start time of a timeslot as a sum of a plurality of grant values of upstream slot bandwidth (Figures 1 and 2; page 1, paragraphs [0004]-[0007]).

Regarding claim 3, Haran et al. disclose that the upstream control message (i.e., report message “REP”) for upstream report includes a queue level (i.e., a level pertaining the priority of the data), and a queue report as a sum of a plurality of queue state reports (page 1, paragraphs [0006]-[0007]).

***Allowable Subject Matter***

5. Claims 4-7 are allowed. Reasons for the indication of allowable subject matter were presented in the previous Office action.

***Response to Arguments***

6. Applicant's arguments filed 26 April 2007 with respect to claims 1-3 have been fully considered but they are not persuasive. Again, Examiner respectfully notes that the declarations filed on 26 April 2007 under 37 CFR 1.131 have been considered but are ineffective to overcome the Haran et al. (US 2005/0249497 A1) reference.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Y. Leung whose telephone number is 571-272-3023. The examiner can normally be reached on Monday to Friday, 7:30 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHRISTINA LEUNG  
PRIMARY EXAMINER